

§ 40.8

(d) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in paragraph (a) or (b) of this section to the Directors.

[66 FR 42283, Aug. 10, 2001, as amended at 67 FR 62352, Oct. 7, 2002; 67 FR 62880, Oct. 9, 2002; 71 FR 1971, Jan. 12, 2006]

§ 40.8 Availability of public information.

(a) The following sections of all applications to become a registered entity will be public: transmittal letter, proposed rules, the applicant's regulatory compliance chart, documents establishing the applicant's legal status, documents setting forth the applicant's governance structure, and any other part of the application not covered by a request for confidential treatment.

(b) Any information required to be made publicly available by a registered entity under Sections 5(d)(7), 5a(d)(4) and 5b(c)(2)(L) of the Act, respectively, will be treated as public information by the Commission at the time an order of designation or registration is issued by the Commission, a registered entity is deemed to be designated or registered, or a rule or rule amendment of the registered entity is approved or deemed to be approved by the Commission or can first be made effective the

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day following its certification by the registered entity.

[67 FR 62880, Oct. 9, 2002, as amended at 69 FR 67505, Nov. 18, 2004; 71 FR 1971, Jan. 12, 2006]

APPENDIX A TO PART 40—GUIDELINE NO.

1

(a) Application for Designation of Physical Delivery Futures Contracts

A board of trade shall submit:

(1) The rules setting forth the terms and conditions of the futures contract.

(2) A description of the cash market for the commodity on which the contract is based.

(i) The description may include, in addition to or in lieu of materials prepared by the board of trade, existing studies by industry trade groups, academics, governmental bodies or other entities, reports of consultants, or other materials which provide a description of the underlying cash market.

(ii) Where the same, or a closely related commodity, is already designated as a contract market which and is not dormant, the cash market description can be confined to those aspects relevant to particular term(s) or condition(s) which differ from such existing contract.

(3) A demonstration that the terms and conditions, as a whole, will result in a deliverable supply such that the contract will not be conducive to price manipulation or distortion and that the deliverable supply reasonably can be expected to be available to short traders and salable by long traders at its market value in normal cash marketing channels.

For purposes of this demonstration, provide the following information in chart or narrative form.

CONTRACT TERMS AND CONDITIONS

Term or condition	Exchange proposal	Rule number of identical approved provision, if any ¹	Explanation as to consistency with, or reason for variance from cash market practice
1. Commodity characteristics (e.g., grade, quality, weight, class, growth, issuer, origin, maturity, source, rating, etc.)
2. Any quality differentials for nonpar deliveries, or lack thereof
3. Delivery points/region
4. Any locational differentials for nonpar deliveries, or lack thereof
5. Delivery facilities (type, number, capacity, ownership)
6. Contract size and/or trading unit
7. Delivery pack or composition of delivery units
8. Delivery instrument (e.g., warehouse receipt, shipping certificate, bill of lading)
9. Transportation terms (e.g., FOB, CIF, prepay freight to destination)
10. Delivery procedures
11. Delivery months
12. Delivery period and last trading day
13. Inspection/certification procedures (verification of delivery eligibility, any discounts applied for age)
14. Minimum price change (tick) equal to or less than cash market minimum price increment